MARRIAGE—SUIT TO ANNUL—ALIMONY IN SUIT BY THIRD PARTIES.—A testator devised his property in trust for the support of his son during his life, and upon the son's death, to pay and distribute what remained to and among his heirs at law and next of kin as prescribed by law in case of intestacy. After testator's death the son married defendant, by whom he had issue one son. After the death of defendant's husband, plaintiffs, collateral heirs of testator, brought action to annul the marriage on the ground of lunacy of testator's son at the time of the marriage. On motion by defendant for alimony and counsel fee, *held*—alimony and counsel fee can only be allowed when the relation of husband and wife exists. The obligation to support and maintain is the underlying principle which justifies the granting of alimony and counsel fee when the marriage relation is attacked. Plaintiffs are strangers to defendant and owe her no duty of support. She is not a privileged suitor against them, but only against her husband while he lived. *Farnham* v. *Farnham,* (N. Y., 1919), 124 N. E. 894.

Such a case as this seldom arises for the reason that suits to annul marriages may be brought by others than a party to the relation only in a few exceptional cases. However, there are two decisions in accord with the present one, *Stivers* v. *Wise,* 46 N. Y. S. 9, and *Erwin* v. *Erwin,* 120 Ark. 581, in both of which counsel fees and alimony were disallowed the wife in a suit for annulment brought against her by the husband's guardian. In the present case Pound, J., dissenting, distinguishes between alimony and counsel fees and holds that the latter should be allowed. He says, "On general principles of equity, the court should have power to require those who seek to annul a marriage for their pecuniary gain to pay such sums as may be necessary to enable the wife to conduct her defense * * * The fact that he [the husband] is dead does not make the claim for counsel fee inequitable." This, we submit, is sound reasoning. There would seem to be a greater equity, if anything, in the defense of the marriage relation against collateral attack, than in a direct action by one of the parties, especially after the death of the husband. It might be well to note that the basis of the allowance of both alimony and counsel fees is equitable, though it is often defined by statute. See *Webb* v. *Wayne Circuit Judge,* 144 Mich. 674, and *Higgins* v. *Sharp,* 164 N. Y. 4, in which the power of the court to allow alimony and counsel fee is held to be an incident to the jurisdiction.

NEGLIGENCE—FAILURE TO MAKE BRIDGE SAFE FOR CHILDREN—"ATTRACTIVE NUISANCE."—Defendant city built a bridge over a culvert that discharged into a small pool; the waters were colored by dyes poured into the stream by mills above the bridge. The bridge was in a populous part of the city, and for twenty years children had played on vacant land nearby. Plaintiff's intestate, a child of 28 months, crawled between the parallel iron pipes that formed the bridge railing to see the "rushing of the colored waters," and fell to the base of the culvert and was killed. In an action for damages, *held,* (two judges dissenting) defendant was liable, as the injury was caused by its negligence in failing to maintain a railing that would sufficiently protect

children of the neighborhood attracted to the spot. *Comer* v. *City of Winston-Salem,* (N. C., 1919) 100 S. E. 619.

The opinion states that this is not, strictly, a case of "attractive nuisance," as the bridge was a structure necessary to the use of the city. However, as the case decides that the city owed a duty to protect children attracted to the bridge by curiosity to investigate the cause of "the gurgling of the many-hued waters," it adopts the reasoning of the "attractive nuisance" cases, and imposes the peculiar liability laid down in them, as well on municipalities that maintain public works as on private enterprises whose premises contain devices dangerous but attractive to children. The general rule is that the owner or occupier of premises owes no duty to trespassers further than to refrain from wilful acts of injury. 2 COOLEY, TORTS (3d Ed.) 1268 and cases cited. But an exception is sometimes made in the case of children of tender years, where the owner or occupant of premises maintains thereon something attractive to children and also dangerous to them if meddled with. COOLEY, *supra* 1269. Similar statements in 1 THOMPSON, NEGLIGENCE (2d Ed.) § 1024; 33 CENT. L. J. 325, note. This exception has been recognized in a series of decisions known as the "Turn-table Cases," the leading case being *Railroad Co.* v. *Stout,* 17 Wall. 657, decided in the Supreme Court in 1873. It has been approved in Minn., Mo., Cal., Ohio, Kan., Tex., Ga., S. C., and Neb. 14 L. R. A. 781-783 and cases there cited. In many jurisdictions the doctrine has been extended to cover a diversity of dangerous situations: cog-wheels exposed outside defendant's mill, *Whirley* v. *Whiteman,* 1 Head. (Tenn.) 610; unprotected elevator, *Mullaney* v. *Spence,* 15 Abb. Pr. (N. S.) (N. Y.) 319; defective gate, *Birge* v. *Gardiner,* 19 Conn. 507; ponds of water, *Brinkley Car Works* v. *Cooper,* 60 Ark. 545; *Price* v. *Atchison Water Co.,* 58 Kan. 551, *Pekin* v. *McMahon,* 154 Ill. 141. In the last case, the court holds it is impossible to distinguish, as to attractiveness, between turn-tables and ponds of water. See for complete discussion 5 MICH. L. REV. 357. See also 1 MICH. L. REV. 418, 605; 4 MICH. L. REV. 78; 8 MICH. L. REV. 688. The doctrine was applied to a water reservoir in the jurisdiction of the principal case in *Selma* v. *Starling Cotton Mills,* 171 N. C. 222. But recognition of the exception in any but turn-table cases is not by weight of authority, COOLEY, *supra, 1272* and cases there cited. Some jurisdictions flatly refuse to follow the doctrine of *Railroad Co.* v. *Stout, supra,* and hold that the owner of premises owes no legal duty to trespassers, except to refrain from inflicting wilful injuries, *Daniels* v. *N. Y. and N. E. R. Co.,* 154 Mass. 349; *D. L. and W. R. Co.* v. *Reich,* 61 N. J. L. 635; *Frost* v. *Eastern R. Co,* 64 N. H. 220; *Walsh* v. *Fitchburg R. Co.,* 145 N. Y. 301. See also *Dobbins* v. *M. K. and T. Ry. Co.,* 91 Tex. 60. It has been remarked that this is true "chiefly in those portions of our country which are dominated by railroad and other corporate influences." THOMPSON, *supra,* § 1040. It is inferable from the report of the principal case that the bridge from which the child fell, built in 1917, was different from the one it replaced, in that the old bridge had solid brick railings which would protect adequately children playing on it. If this was the fact, the decision is supportable on slightly different grounds from those given above. A few cases indicate

that if premises have been used as a playground for children for a long time, and have been safe for that period, and the owner makes a dangerous excavation or erection on them, which he leaves unguarded, it would be in the nature of a trap which would make him liable for injuries caused by it. 26 L. R. A. 687 and cases there cited. *Penso* v. *McCormick,* 125 Ind. 116; *Indianapolis* v. *Emmelman,* 108 Ind. 530.

PARENT AND CHILD—DUTY OF FATHER TO SUPPORT NOT ENFORCEABLE IN EQUITY.—Where a father had abandoned his children, and they had filed a bill in equity for a decree against him for a monthly maintenance allowance, to be made a lien upon his property. *Held,* that there was no authority for the assumption of equity jurisdiction in such a case, and that it would be against public policy and family unity to extend its jurisdiction to cover a suit of a child against its father. There was a strong dissenting opinion. *Rawlings* v. *Rawlings,* (Miss., 1919) 83 So. 146.

By the common law of England—which was followed in a few early American cases—a father was not legally bound to support his infant child, and would not be liable for necessaries furnished for the support of the child. *Urmston* v. *Newcomen,* 4 Ad. & El. 899; *Mortimer* v. *Wright,* 6 Mees. & W. 482; *Kelley* v. *Davis,* 49 N. H. 187; *Hunt* v. *Thompson,* 3 Scam. (Ill.) 179; *Gordon* v. *Potter,* 17 Vt. 348. But this doctrine has not been followed by the majority of American courts. *Dunbar* v. *Dunbar,* 190 U. S. 340; *Brown* v. *Brown,* 132 Ga. 712; *Gilley* v. *Gilley,* 79 Me. 292; and many others. See 13 MICH. L. REV. 345; 20 R. C. L. 622. However the remedy at law is very inadequate, since it requires credit to the infant, and generally a suit to recover for the necessaries. So there is much force in the argument of the dissenting opinion that such a remedy at law is inadequate for the infant. Now inadequacy of the remedy at law is a ground for equity jurisdiction, where there is an existing legal duty. *Garland* v. *Garland,* 50 Miss. 694; *Prather* v. *Prather,* 4 Dess. (S. C.) 33; *Glover* v. *Glover,* 16 Ala. 440. In these last cited cases, a wife was allowed to recover an allowance for her support from her husband, without a divorce. Also where the wife has brought a bill in equity for the maintenance and support of the children, it has been allowed. *Leibold* v. *Leibold,* 158 Ind. 60; *De Brauwere* v. *De Brauwere,* 203 N. Y. 460, commented on in 10 MICH. L. REV. 415. In many other cases equity courts have said that they had full jurisdiction over minors. *Williams* v. *Duncan,* 44 Miss. 375; *Johns* v. *Smith,* 56 Miss. 727. Nor has equity hesitated to make an allowance out of a minor's estate for its maintenance and support, where the father was unable to support the child at all, or in a station befitting its expectancy. *Watts* v. *Steele,* 19 Ala. 656. So from the above it does not seem that equity would have had much difficulty in assuming jurisdiction in such a case as the principal one. However the majority of the court, in the principal case, thought it was against public policy and family interests, to allow a suit by a minor in equity directly against its father. And in support of their contention they had the only authority, directly in point. *Huke* v. *Huke,* 44 Mo. App. 308.